



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

January 21, 2010

Re: Wilmington –Solid Waste/COR
Maple Meadow Landfill
FMF #39914
ACOP-BO-04-Z009-SETT
BWP SW 23
APPROVAL-Comprehensive
Site Assessment
Supplemental Determination

Clarence Spinazola
1994 Revocable Trust (Peter Sutton, Trustee)
Reimer & Braunstein LLP
Three Center Plaza
Boston, MA 02108

CORRECTION¹

and

Michael Toomey
Boston Environmental and Trucking
338 Howard Street
Brockton, MA 02302

Dear Mr. Buckley and Mr. Toomey:

On March 30, 2006 the Massachusetts Department of Environmental Protection ("MassDEP") issued its Decision regarding the Comprehensive Site Assessment ("CSA") for the Spinazola Site ("Site"), also referred to as the Maple Meadow Landfill Closure Project ("MML"), located at 923 Main Street in the Town of Wilmington, MA., the current owner of this Site being the Clarence Spinazola 1994 Revocable Trust ("Trust"). A copy of that Decision is included as attachment No. 1. The CSA was submitted on behalf of the Trust by Mass

¹ Corrected references to Global Environmental Solutions (GES) and Geosyntec are indicated in bold/italics

Environmental Associates, Inc. (“MEA”) who at that time had a License Agreement with the Trust for certain actions related to closure of the historic dumping ground at the Site. The information contained in the CSA concluded that based upon MassDEP regulations and procedures and the site assessment conducted to date, the Site poses a Significant Risk to an On-Site and Off-Site “Recreator”. This conclusion was described in an October 3, 2005 Gradient Report and updated in January 12, 2006 Gradient correspondence.

The January 12th correspondence stated in part:

“The on-site recreator has a total excess lifetime cancer risk of 3×10^{-3} , which exceeds the DEP target of 1×10^{-5} . The onsite recreator has a total non-cancer risk of 1720, which exceeds the DEP target hazard index of 1.0. The off-site recreator has a total excess lifetime cancer risk of 1×10^{-3} , which exceeds the DEP target cancer risk of 1×10^{-5} , and a total non-cancer risk of 16, which exceeds the DEP target hazard index of 1.0. **In each case, more than 99% of the total risk is due to fish ingestion.** The risks of exposure to sediment and surface water alone are below an HI [hazard index] of 1.0 and a target cancer risk of 1×10^{-5} ” (emphasis added).

MassDEP concurred with the conclusions of the CSA report, but stated that the health risk to the recreator was based on the assumptions that there are edible fish species in Maple Meadow Brook and that the fish flesh is actually contaminated to the degree that the approved risk assessment procedures predicted, and in order to validate whether the risk assessment model is consistent with actual Site conditions, MassDEP recommended to MEA that they conduct appropriate field studies to provide information on whether the modeled fish ingestion pathway is “overly conservative” and that the Site Remedial Action (a Corrective Action Design) eventually proposed can attain a condition of No Significant Risk.

This recommendation, and others, were addressed by MEA’s environmental consultant ***Global Environmental Solutions*** (“GES”) in February 27, 2006 correspondence to MassDEP in which GES proposed to perform:

- (1) supplemental sediment sampling approximately 50-feet downgradient from the existing sediment sampling locations; and
- (2) a phased fish study that would initially determine if edible species of fish are present in Maple Meadow Brook and if there are such fish then would collect fish from two locations in Maple Meadow Brook with the fillets analyzed for the contaminants creating the risks identified in the Gradient submittals.

The February 27, 2006 correspondence also stated that the results of the supplemental sediment sampling and a new risk evaluation using this data was anticipated to be completed in May 2006 and that the fish capture would occur in April 2006 with the new risk evaluation completed in May 2006.

MassDEP's March 30, 2006 correspondence included the following:

“This correspondence constitutes a ‘letter from the Department approving the CSA’, in accordance with paragraph 57 of the MEA ACOP. MEA may proceed with the CAAA and CAD as provided in the MEA ACOP based on this approval with the conclusion that the Site poses a Significant Risk to an On-Site and Off-Site ‘Recreator’. MEA may seek to validate whether the risk assessment model is consistent with actual Site conditions, by conducting appropriate field studies which may provide information on whether the modeled fish ingestion pathway is ‘overly conservative’ and that the Site Remedial Action (a Corrective Action Design) eventually proposed can attain a condition of No Significant Risk. If MEA chooses to evaluate the actual Site conditions, MEA shall:

- (1) address MassDEP concerns (described in the March 2, 2006 email) regarding the final SOW for Phase II of the fish study;
- (2) conduct (or have its contractor conduct) the supplemental sediment sampling as proposed by GES;
- (3) conduct (or have its contractor conduct) the fish study in accordance with the approved SOW by April 30, 2006; and
- (4) submit a new risk evaluation to MassDEP by May 31, 2006.

Based on the results of the submissions from the approved SOWs and the new risk evaluation, MassDEP will reconsider the level of risk the Site presents and either confirm or revise this approval as appropriate”.

In 2006 the Trust signed a License Agreement with Boston Environmental and Trucking (“BET”) to continue with closure of the Maple Meadow Landfill and in 2007 and 2008 a series of documents were submitted to MassDEP by either BET or its consultants **Geosyntec** and Gradient which addressed the supplemental sediment sampling and fish study. These submittals included the following:

- (1) May 11, 2007 correspondence from BET which transmitted an August 2006 Report titled: **Supplemental Sediment Sampling, Analytical Laboratory Report, Maple Meadow Landfill, Wilmington, Massachusetts;**
- (2) May 11, 2007 correspondence from BET which transmitted an October 2, 2006 Report prepared for BET by Gradient Corporation titled: **Revised Supplemental Method 3 Stage II Environmental Risk Characterization, Maple Meadow Landfill, Wilmington, Massachusetts;** and

- (3) May 2, 2008 correspondence from *Geosyntec* which transmitted an April 17, 2008 Report prepared for BET by Gradient Corporation titled: **Maple Meadow Landfill, Final Comprehensive Site Assessment, Supplemental to Final Report, Risk to Recreators.**

The October 2, 2006 Report's Conclusion section includes the following statement relative to ecological risk:

“Based on Site environmental conditions and the marginal exceedance of the target HI [Hazard Index] of 1.0 for the muskrat and short-tailed shrew, concentrations observed in the uncapped sediment and surface water are not likely to impact these receptors. In general, the likely environmental conditions in the wetland areas adjacent to the Site (e.g., likely low bioavailability of metals and organic compounds in sediment) and the inherent conservatism in the ecological risk assessment methodology **indicate low probability of risk of harm to the environment**” (emphasis added).

The April 17, 2008 Report's Conclusion section includes the following statement relative to human health risk:

“The information presented in this report supersedes the risk evaluation in the original CSA report for on-Site and off-Site recreators for the Maple Meadow Landfill Site. Due to the absence of fish for human consumption in the fish survey, Gradient concludes that the fish ingestion pathway is not viable and therefore eliminated this pathway from the risk characterization. Risks for receptors were evaluated for dermal contact and ingestion of sediment and surface water only. Using a combination of Site-specific and MassDEP-recommended default exposure assumptions, **it is concluded that the Site poses No Significant Risk to human health**” (emphasis added).

DETERMINATION

Based on the information contained in the updated ecological risk characterization and human health risk assessment (summarized in the above report's excerpts) for this Site and under the current and foreseeable future use which restricts public access and active uses, MassDEP **approves** the supplemental CSA which concluded that the Site, in its current condition and access controls, **poses no significant risk to public health, welfare, safety, or to the environment**. If the physical conditions of the Site change or controls of site access are not maintained, or new information is obtained that impacts the conclusions in the CSA including, without limitation the public health and/or ecological assessments, MassDEP may rescind, supplement, or modify this Determination.

This approval does not constitute a decision by MassDEP that the Site has completed closure pursuant to 310 CMR 19.000 or achieved a permanent or temporary solution pursuant to 310 CMR 40.0000, the Massachusetts Contingency Plan. The Site is still subject to compliance

with 310 CMR 19.000 including, without limitation the closure and post-closure requirements, and 310 CMR 40.0000.

NOTICE OF RIGHT TO APPEAL

The Trust and/or Boston Environmental and Trucking, are hereby notified that they may (individually or as a group) within twenty-one (21) days of the date of this DECISION file a request that this decision be deemed a provisional decision under 310 CMR 19.037(4)(b), by submitting a written statement of the basis on which the Trust or BET believes it is aggrieved, together with any supporting materials. Upon timely filing of such a request, the decision shall be deemed a provisional decision with an effective date twenty-one (21) days after the Department's receipt of the request. Such a request shall reopen the administrative record, and the Department may rescind, supplement, modify, or reaffirm its decision. Failure by the Trust to exercise the right provided in this section shall constitute a waiver of their right to appeal.

Appeal. Any person aggrieved by the issuance of this decision, except as provided for under 310 CMR 19.037(4)(b), may file an appeal for judicial review of said decision in accordance with the provisions of M.G.L. c. 111, s. 150A, and M.G.L. c. 30A, not later than thirty (30) days following the receipt of the final decision. The standing of a person to file an appeal and the procedures for filing such appeal shall be governed by the provisions of M.G.L. c. 30A. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the decision by a court of competent jurisdiction, the decision shall remain effective.

Notice of Action. Any aggrieved person intending to appeal this decision to the Superior Court shall first provide notice to the Department of their intention to commence such action. Said notice of intention shall include the Department file number and shall identify with particularity the issues and reasons why it is believed the decision was not proper. Such notice shall be provided to the Office of General Counsel of the Department and the Boston Office which processed the application. The appropriate addresses to which to send such notices are:

General Counsel
Massachusetts Department of Environmental Protection
One Winter Street - 3rd Floor
Boston, MA 02108

Steven G. Lipman, P.E.
Massachusetts Department of Environmental Protection
One Winter Street – 3rd Floor
Boston, MA 02108

No allegation shall be made in any judicial appeal of this decision unless the matter complained of was raised at the appropriate point in the administrative review procedures

established in those regulations, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during such procedures or that matter sought to be raised is of critical importance to the environmental impact of the permitted activity.

Feel free to contact me at (617) 292-5698 if you have any questions regarding this correspondence.

Very truly yours,

Steven G. Lipman, P.E.
Commissioner's Office

Cc:

Dan Duffy, ***Geosyntec***
Michael Caira, Town Manager, Wilmington
Shelly Newhouse, Wilmington Health Director
Michael Penney, GeoInsight
Phil Weinberg, Richard Chalpin, Laura Swain, Susan Ruch, John Carrigan, Iris Davis and
Andrew Friedmann, MassDEP

MML CSA Approval Supplemental Determination Rev